IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.5422 OF 2004

Padmashree Annasaheb Jadhav Bhartiya
Samaj Unnati Mandal, having office at
Bhiwandi, Dist. Thane:
Through Trustees:
1) Shri Hindurao L. Gade & Ors. : Petitioners

V/s.

Charity Commissioner, Mumbai & Ors. : Respondents

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Mr.A.Y.Sakhare with Mr.Kuldeep Patil for the petitioners.
Mr.Y.H.Muchhala with Mr.Sagheer A. Khan for the respondent no.1.
Mr.S.K.Chinchalikar, Asstt. Govt. Pleader, for the respondent no.2.
Mr.R.S.Apte for the applicant in C.A. No.2300 of 2004.

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CORAM : S.A. BOBDE, J.

August 10, 2005.

P.C.:

1. Rule, returnable forthwith.

The learned counsel for the respective respondents waive service of rule.

Heard by consent.

2. The petitioners, who are trustees of Padmashree Annasaheb Jadhav Bhartiya Samaj Unnati Mandal, have challenged the order dated 27.5.2004 at exh.'A' passed by the Charity Commissioner appointing two Chartered Accountants to conduct the special audit in regard to the accounts of the trust. The petitioners have also challenged the order dated 23.3.2004 under section 60(1) of the Bombay Public Trusts Act, 1950, hereinafter referred to as the "Act", sanctioning a sum of Rs.10,00,000/- for the purpose of special audit on condition that the amount may be recovered from the petitioner-trust.

3. From the background of the case, it is seen that certain complaints regarding financial irregularities have been investigated by the Anti-Corruption Bureau of the State of Maharashtra which has recommended that a special audit be carried out in regard to the petitioner-trust vide exh.3 to the affidavit-in-reply of Mr.S.V.Chindhade, Asstt. Charity Commissioner.

4. Mr.Sakhare, the learned counsel for the petitioners, submitted that the impugned order dated 23.3.2004 under section 60(1) is illegal, in view of the fact that the

order to the extent it directs recovery of the special audit fee of Rs.10,00,000/- from the petitioner-trust without hearing them.

5. Mr.Muchala, the learned counsel for the respondent no.1 Charity Commissioner submits that the argument is wholly premature and misconceived at this stage, in view of the fact that the order dated 23.3.2004 passed under section 60(1) does not make any demand on the petitioner-trust for payment of fees of Rs.10,00,000/-. The learned counsel relied on rule 20 which provides for fee for special audit. The said rule reads as follows:-

> **"20. Fee for special audit**
>
> (1) The fee for special audit under sub-section (4) of section 33 shall be fixed by the Charity Commissioner according to the circumstances of each case:
>
> Provided that in no case shall such fee exceed one per centum of the gross annual income of the public trust or be less than Rs.50.
>
> Explanation.--For the purposes of this sub-rules the gross annual income shall include gross income from all sources in a

year, excluding donations given or offerings made with a specific direction that they should form part of the corpus of the public trust.

(2) before a special audit is directed under sub-section (4) of section 33, the Charity Commissioner may require the trustee of the public trust concerned or the person moving the Charity Commissioner for such special audit to deposit such amount as would in the opinion of the Charity Commissioner be sufficient to meet the cost thereof.

(3) The Charity Commissioner, after completion of the special audit, may direct the whole or any part of the cost thereof, to be met from the funds and property of the public trust or out of the Public Trusts Administration fund of be borne by the person moving the Charity Commissioner for such special audit."

It is in the discretion of the Charity Commissioner to require the trustee of the public trust or the person moving the Charity Commissioner for such special audit to

fix the fee and deposit such amount as would in the opinion of the Charity Commissioner be sufficient to meet the cost of the audit. Sub-rule (3) empowers the Charity Commissioner to direct the whole or any part of the cost of the special audit to be met from the funds and property of the public trust or out of the Public Trusts Administration fund. In short, the contention of the learned counsel for the Charity Commissioner is that this discretion has not been exercised by the Charity Commissioner as yet and no demand has been made on the petitioners either for fee or for costs. The learned counsel makes a specific statement that should the Charity Commissioner decide to recover any part of the fee or costs for the special audit from the petitioners, he would furnish notice to the petitioners making such demand. In this view of the matter, there is no reason to interfere with the order made on 23.3.2004 under section 60(1) of the Act.

6. As regards the challenge to the order dated 27.5.2004 directing the appointment of two persons to carry out the special audit, I see no illegality or impropriety since the special audit has been ordered under section 33 which, to the extent relevant, reads as follows:-

"33. Balancing and auditing of accounts

(1) .....

(2) .....

(3) .....

(4) Notwithstanding anything contained in the preceding sub-sections--

(a) the Charity Commissioner may direct a special audit of the accounts of any public trust whenever in his opinion such special audit is necessary. The provisions of sub-section (2) and (3) shall, so far as may be applicable, apply to such special audit. The Charity Commissioner may direct the payment of such fee as may be prescribed for such special audit; and

(b) State Government may, by general or special order, exempt any public trust or class of public trusts from the provisions of sub-section (2), subject to such conditions as may be specified in the order."

The section clearly contemplates audit by a Chartered Accountant. Surely, the trust which is being subjected to

special audit in such circumstances cannot be allowed to have a say in the choice of Auditors who are appointed for the purpose.

7. In this view of the matter, the rule is discharged. There shall be no order as to costs.

8. In view of the disposal of the Writ Petition, Civil Application no.2300 of 2005 does not survive and the same stands disposed of.

S.A. BOBDE, J.